

Executive Order	
86-	2435/1


13 August 1986

MEMORANDUM FOR: NIO/FDIA  
C/CCISCMS, ICS

FROM: Director of Central Intelligence

SUBJECT: SSCI Questions for the Record on Security Countermeasures

Can you try your hand at developing a composite answer, putting the three points of views in one response to each of the questions, with the response following each question. See how close such a draft could come to bridging the differences. Meanwhile, I will see if the NSC wants to take the initiative in bridging the differences.

  
William J. Casey

Attachment

~~CONFIDENTIAL~~

25X1

SSCI QUESTIONS FOR THE RECORD ON SECURITY COUNTERMEASURES

3 JULY 1986

## QUESTION AREA: Unauthorized Disclosures

QUESTION 22: Please provide the views of the DCI, the Secretary of State, and the Secretary of Defense on the following: (U)

- (a) Are there any reasons why it would not be useful to have formal procedures governing the disclosure of classified information?
- (b) What are the advantages and disadvantages of requiring that advance approval be obtained for the disclosure of classified information?
- (c) What are the advantages and disadvantages of requiring that the Intelligence Community be given a chance to argue against the disclosure of classified information based upon intelligence, before approval is given for the disclosure of such information?
- (d) What are the advantages and disadvantages of requiring that memoranda of conversation be written on all media contacts, and that such memoranda be reviewed periodically?
- (e) What are the advantages and disadvantages of requiring that classified information be formally declassified before being provided to media contacts for publication?

DCI ANSWERS. (U)

- (a) There is no reason not to have formal procedures governing the disclosure of classified information (to persons not cleared or authorized to receive it). In fact, procedures for declassifying information exist in Section 3.1 of E.O. 12356, "National Security Information." Part 4 of E.O. 12356 describes restrictions on access to classified information.
- (b) The advantages of requiring advance approval to disclose classified information are: (1) it is required by the Executive Order; (2) it would help preclude unauthorized disclosures by persons unqualified to determine the need for continued classification; and (3) it will help foster a sense of order and uniformity regarding declassification procedures. There are no disadvantages that suggest themselves.
- (c) As the official charged by statute with the protection of intelligence sources and methods (an authority recently affirmed by the Supreme Court's Sims decision), the Director of Central Intelligence is the arbiter, subject to Presidential authority, of what classified intelligence may be declassified and released and what should not. There are no apparent advantages to such a requirement.

(d) Advantages of the documentation of media contacts would include having officials give appropriate consideration to their comments, thus reducing the likelihood that classified information will be publicly disclosed to friend and foe alike. A computerized system would facilitate the review of data on who discussed what with whom and when. Moreover, the people have a right to a record of a public servant's comments on any official matter, including those to the media which may include classified information. The only disadvantage would be the difficulty of obtaining compliance. The review of such a record would be invaluable in the extremely difficult process of investigating unauthorized disclosures.

(e) A requirement for declassification before disclosure to journalists for publication simply attempts to ensure that those responsible for the classification of the information have an opportunity to weigh the merits of any proposed disclosure. There are no apparent disadvantages to carefully considered, judicious declassification. In the case of unauthorized disclosure, however, it may be advantageous to continue to consider the information classified to help guard against further unauthorized disclosures of related information.

SECRETARY OF STATE ANSWERS. (U)

(a) Procedures exist for declassification and for the disclosure of classified information to foreign governments. In the latter case, if the information to be disclosed is intelligence collected by another agency, permission for disclosure and any sanitization necessary to protect sources must be cleared with the originating agency. Any disclosure to foreign governments of classified information originating in Foreign Service reporting must be authorized by the Department of State, usually through the medium of instructions to the Embassy or Embassies through the Diplomatic Telecommunications System.

In the case of briefings to the press, any disclosure of sanitized information originating with intelligence agencies requires the clearance of the originating agency.

To institute more formal procedures would be possible, but not very practical. They would require the reallocation of personnel from diplomatic tasks to the disclosure function and would not inhibit leaks, which come from people who seek to circumvent disclosure policy by providing unauthorized information to the press.

(b) The primary advantage is that it would establish a degree of control which would evolve into the creation of uniform standards and criteria for the release of information. It would, however, reduce the flexibility of high-level policymakers to make timely disclosures advantageous to the US Government and would not inhibit leaks.

(c) The procedures provide for this in requiring the concurrence of other intelligence agencies prior to disclosure, in sanitized fashion, of information originating with them.

(d) Assuming that contacts with the media result in intentional or inadvertent unauthorized disclosures to the media, then such records could be useful in the investigation of unauthorized disclosures. This is also based upon the assumption that there is a system in place which would ensure that everyone conforms with the requirement. In reality, it would probably be unenforceable and would do nothing to deter unauthorized disclosures. Such a requirement surely would be given bad press by the media (i.e., freedom of the press issues), could discourage necessary media contacts, and could result in unnecessary employee morale problems.

(e) This is required under the provisions of Executive Order 12356.

SECRETARY OF DEFENSE ANSWERS. (U)

(a) It is useful to distinguish here, for the record, that we are speaking about procedures that go beyond the scope of E.O. 12356, "National Security Information," and implementing directives and regulations. Clearly, there is a need for a mechanism for declassifying and then disclosing information that ordinarily would not be declassified because of the expected damage to the national security and, in fact, such a mechanism does exist within the Department of Defense. On occasion, such action is appropriate to the accomplishment of a significant national security objective--the Cuban missile crisis is an old but pertinent illustration. However, under no circumstances should classified information be disclosed to the public.

(b) As indicated above, E.O. 12356 and its implementers provide procedures for the disclosure of classified information. In essence, the procedures stipulate that the prospective recipient must have the appropriate security clearance and a need-to-know for the information involved. The chief advantages to having procedures to obtain advance approval "for the disclosure of classified information," really the declassification and subsequent disclosure to the public of formerly classified information, are the maintenance of the integrity of the Executive Order's fundamental requirements previously mentioned and, more broadly, avoidance of a perpetuation of the false public image of the value of classified national security information. Without a properly designed system for obtaining advance approval, the disadvantages become the potential for impeding rapid responses to those relatively few circumstances that demand declassification and release of information even when some damage to the national security likely will accrue.

(c) The advantage of requiring that the Intelligence Community be given a chance to argue against disclosure, based upon intelligence, is that such coordination reasonably can be expected to avoid unwitting damage to intelligence sources or methods by officials who may not be aware of their fragile nature or involvement. Disadvantages include the likelihood of increased coordination time and the fact that, in many

cases, such coordination would not be required. Further, mandatory coordination with the Intelligence Community in all cases would infringe on the authority of agency heads with respect to the declassification of their information, much of which is not dependent on intelligence sources or methods.

(d) The advantages of requiring that memoranda of conversation be written on all media contacts, with periodic review of such memoranda, would be to provide investigative leads for use in "leak" cases, to make officials more careful about what they discuss with the media, and to get better compliance with extant security and public affairs policy. However, there are disadvantages, including the prospect of massive noncompliance at high levels of the government and even the possibility of falsification of such memoranda. Given the difficulty of getting senior officials to comply with such a rule, it could lead to widespread contempt for it by those at lower levels in the bureaucracy.

(e) The advantages of requiring that classified information be formally declassified before being provided to media contacts for publication or otherwise are discussed in (a) and (b) above. A further advantage, simply stated, is that such a course of action (that is, declassification and then disclosure) is the only legal course to follow. So-called "backgrounders" and "off-the-record" statements never have been legal from the perspective of the executive orders governing the security classification system. As already noted, they violate the long-standing Executive Order provision that requires a determination of trustworthiness (that is, a security clearance--and need-to-know) before access may be granted. Members of the media do not hold security clearances. The chief disadvantage, in addition to those noted above, is that the disclosure to the media of information that is classified further degrades the public's respect for the security classification system and the need to protect some information in the interest of national security. Without gaining the public's trust and respect for the system, we will remain in an uphill fight to secure the nation's most vital information.

# EXECUTIVE SECRETARIAT

## ROUTING SLIP

TO:

		ACTION	INFO	DATE	INITIAL
1	DCI		X		
2	DDCI		X		
3	EXDIR		X		
4	D/ICS		X		
5	DDI				
6	DDA				
7	DDO				
8	DDS&T				
9	Chm/NIC				
10	GC				
11	IG				
12	Compt				
13	D/OLL				
14	D/PAO				
15	D/PERS				
16	VC/NIC				
17	D/CCISMS	X			
18	NIO/FDIA	X			
19	C/UDAC		X		
20	D/Security		X		
21	C/S		X		
22	ES		X		
SUSPENSE		22 August 1986 Date			

Remarks To 17 and 18: Please have requested draft composite response prepared for ADCI review.

Executive Secretary

14 August 1986  
Date

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